

Competitive Negotiation
January 29, 1999 Public Workshop
Questions and Answers

Please note: The terms RFP (Request for Proposal) and SCP (Solicitation for competitive proposal) are used interchangeably in this document.

1. Will the scorers be in all of the meetings?
 - A. Our current process implementation plans call for a minimum of three scorers in each discussion meeting.

2. Will there be an opportunity to comment on the reviewing process before the final scoring?
 - A. Yes and no. The pre-bid conferences are for discussion of the process and criteria. During the discussion phases, there should be enough give and take to understand the review process, especially the requirements of the RFP, but once the final proposal is received, there can be no further discussions.

3. How will this process address problems of reviewers not understanding the proposal?
 - A. The discussion phases should take care of misunderstandings.

4. Is there a chance that a different reviewer will comment on the proposal after the final bids are submitted?
 - A. It's possible, but we're trying to avoid that through the discussions. If the Energy Commission misses an issue through the discussion phase, then this problem might occur.

5. How does the Energy Commission advertise?
 - A. On the Web site and through normal channels, plus any additional advertising the team leads may want to do.

6. What is the ITB?
 - A. The Intent to Bid (ITB) is part of the RFP. It can be used at the option of the Energy Commission to screen out potentially unqualified bidders but the criteria used will have to solid.

7. What are examples of screening?
 - A. Having institutional capability to perform the work might be a screening criterion.

8. Will a detailed proposal be required at first or conceptual only with the ITB?
- A. Our challenge is to decide on what criteria really go to the basic issues of capabilities to carry out the requirements of the RFP. After that, we will focus on getting the best possible proposal from the bidder.
9. Is this an iterative process?
- A. Yes, see the description of the process.
10. Will criteria be sent with the ITB so bidders can screen themselves?
- A. Yes, the criteria will be in the RFP. Also, in the bidders conference, we have a chance to change the criteria in response to public comments.
11. Will the ITB criteria include a clean credit record?
- A. That was an example so it may or may not be used, but if so, it will have to be a clear criterion.
12. Screening: would it be hard to address a diverse applicant pool?
- A. Yes, we probably wouldn't use it in that case. We can cancel any RFP that won't work.
13. Are "open discussions" going to be confidential?
- A. Yes. All contacts between the Energy Commission and bidders during the discussion phase of this process will be confidential.
14. A problem is lack of transparency and possible favoritism. How will this be addressed?
- A. We're trying to design the system to avoid these problems. The Energy Commission's responsibility is to write a good RFP. In discussion and scoring, we have to use the requirements stated in the RFP.
15. Who is responsible for initiating the meetings?
- A. The Energy Commission staff will send the discussion agenda. The result of the meeting is the discussion memorandum which is an agreement of what will be included in the final bid.
16. Will the review criteria be published too?
- A. Yes, everything will be in the RFP.
17. If there is no ITB, what happens first?
- A. We will go into the discussion phase.
18. Will you be screening the proposers and proposals at the same time?

- A. No, there may be screening step in advance of discussion phase. In the discussion phase, all requirements of the RFP are open for discussion.
19. Will we focus on what bidders should look at?
- A. The Energy Commission will focus, as should the bidders, on the requirements of the RFP.
20. By clearly defining the technology we want, the ITB and two page proposal summary should be enough to use as a screening tool.
- A. This might work, but we are still deciding what, if any, screening criteria might be used.
21. There may be areas that are fuzzy. Should there be a meeting with the public to identify what is going on in area?
- A. We may conduct focus groups as appropriate to help us identify those issues before issuing an RFP.
22. Do you expect 15-16 bidders per technology area?
- A. Around 15 bidders is the maximum number we think we can handle per solicitation. A solicitation will probably deal with only part of a technology area.
23. Will there be a solicitation for each area?
- A. No, probably just one that addresses part of a technology area.
24. Are criteria for choosing a technology area for this process based on what lends itself to the process?
- A. Yes.
25. I have concerns about this process. I support the idea of discussion, but why a new process? It's not clear that this will save time or resources. We might have to write multiple proposals, and this might still take a long time. Could there be a discussion proposal early? Could there be a message to bidder that they should not bother to proceed?
- A. Contact with bidders is not in the current contract law, so this is a change to the current law in a sense. We hope to save bidders' resources through early screening and by letting them know where they stand as early as possible during the discussion phase.
26. Ability to discuss proposals is very important.
- A. What's important to us is to get the best proposals possible. What the cost to bidders will be is unclear.

27. Is this a 3-step process? ITB, discussion and Final Bid?
A. Could be, if an ITB is used.
28. Is it possible to have ten different proposals based on different criteria?
A. We don't think so since an RFP's criteria will apply to all bidders.
29. If there are only one or two competitive negotiation RFPs, will other technology areas do regular RFPs?
A. Yes, probably in parallel in with the pilot competitive negotiation.
30. How long will it take to go through this new process?
A. At worst, not longer than what we currently do. At best, one-half as long. It depends upon the number of bidders and number of discussions.
31. Could there be more than one competitive negotiation trial initially?
A. Possibly, if we have the resources.
32. Will we (bidders) save resources?
A. Our intention is that bidders don't have to use full resources to create a proposal until the final bid.
33. What is the likelihood that this process will be used in the next six months?
A. It's possible that we could release an RFP using competitive negotiation at the end of the first quarter.
34. Have you thought of using this process for unsolicited proposals?
A. That might work, but our primary focus is on competitive solicitations.
35. Can you use ideas from unsolicited proposals for RFPs?
A. It's possible. It's more likely that we'll stay within the subject area plans.
36. Phil says this needs to be focussed to make it work. I think it's 180 degrees opposite. We should say here are some system goals and ask what is out there. Then have a solicitation on that.
A. To clarify, our focus must ultimately come from the constituents actually doing the R&D, and those considering using the R&D results. The Energy Commission's task is to use that input to create a focussed bid document that would lend itself to this new process.
37. Why can't you screen fatal flaws early?
A. We don't expect too many bidders with fatal flaw problems in the proposals when they reach the discussion phase. If we discover that the bidder is unable to meet the requirements of the RFP, we must

communicate that to the bidder. After that, it's the bidders decision as to whether or not to persist in participating.

38. Discussion agreements: could we leave some decisions open for the final proposal to address?
A. It could happen, but we want to try to resolve issues completely and early.
39. Is there demarcation of confidential information vs. public information?
A. Everything is confidential during the process until the awards are announced. After that, everything is public except for those items deemed confidential by the Energy Commission pursuant to a request filed by the bidder.
40. What about contract terms and conditions?
A. Should be same as the current ones.
41. Biggest concern with discussions are “leveling”, i.e. passing info to competitors about strengths and weaknesses. (Or, in the course of discussions, passing on a competitors good idea on to someone else to help them strengthen the proposal, inadvertent or otherwise.)
A. We can't legally divulge information to others. We might try to match bidders where appropriate. Networking of individual projects could result in important outcomes on a larger scale, so within the privacy/contractual/confidential rules, the Energy Commission should try to help networking.
42. Is proprietary information ever divulged?
A. Not if you have been granted confidential treatment pursuant to our regulations. But review/discussion process is confidential until the awards are announced.
43. Who owns intellectual property?
A. Same as before, bidder owns it with license to government to use it free of license fees.
44. Why would Energy Commission require pre-proposal with ITB if ITB is for screening out bidders?
A. Our intention is to know the preliminary approach to question/problem, if that is essential to screening. Use of the word “Proposal” is problem in the ITB process description: say “briefly describe your approach to the problem” in the ITB.